IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3176 OF 1987

Maharashtra Small Scale Industries
Development Corporation Limited .. Plaintiff.

Versus

Mr.U.N.Sinha .. Defendants.

Mr.U.M.Mahajan i/b.M/s.Divekar & Co. for the plaintiff.
None for the defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd JULY, 2007.

P.C.:

1. This suit was placed for dismissal by this Court vide order dated 4th May, 2007 on account of non compliance by the plaintiff with the directions contained in the order dated 23rd March, 2007.

2. Mr.Mahajan appearing for the plaintiff states that the said suit was filed originally as summary suit and on the basis of the submissions made by the parties at that stage and perusing the affidavit in support and the reply,

this Court had passed an order on 19th September, 1988 granting decree on admission in favour of the plaintiff and against the defendant for the sum of Rs.27,304/- with interest @9% per annum and for the balance amount, unconditional leave was granted.

3. Mr.Mahajan states that applications were made to execute the decree but the amount has not been recovered. Thereafter, no written statement has been filed by the defendant. This Court had passed a decree for the aforesaid sum after perusing the affidavit in reply dated 26th August, 1988.

4. Mr.Mahajan also brings to my notice the fact that the order passed by this Court on 23rd March, 2007 does not direct the plaintiff to file any affidavit in lieu of examination-in-chief. However, the affidavit is now filed and there is compliance with the directions of this Court. Accordingly, the request of Mr.Mahajan is that the plaintiff be permitted to proceed with the suit and the same should not be dismissed for want of compliance with the directions.

5. Mr.Mahajan further states that the requirements stipulated by Section 65 of the Evidence Act, 1872 have been complied with inasmuch as the case is covered by

Section 65(b) & (c) of the said provisions. He invites my attention to the affidavit filed in lieu of examination-in-chief and submits that the originals are not available. The same are lost as explained in the affidavit. He submits that by the annexures to the plaint and more particularly annexure "M" thereof, the existence of the original agreement as also the cheques and the claim of the plaintiff has been duly admitted. In such circumstances, merely because originals are not available, the plaintiff’s claim should not be defeated.

6. I have perused the plaint and the annexures thereto. I have also perused the order passed by this Court granting decree in the sum of Rs.27,304/- and the affidavit filed in reply filed at that stage. From the contents of the order passed by this Court, it is apparent that the defendant was granted liberty to defend the balance claim in the suit subject to the decree in the sum of Rs.27,304/-. That decree is based upon the same averments and the same annexures to the plaint. Thus, it is the fit case where the Court can exercise its discretion and dispense with production and proof of the originals, more so, when there is no written statement and there is no denial of the claim of the plaintiff. The plaintiff is a public body and I am satisfied that it had granted facilities as applied upon payment in the sum

agreed between the parties. There is no dispute with regard to the facts pleaded in the plaint. The facts as pleaded do not disentitle the plaintiff from a decree inasmuch as the claim is within the jurisdiction of this Court so also is not barred by the law of limitation. There is an acknowledgement of liability and, therefore, the decree can safely be passed in favour of the plaintiff.

7. Accordingly, there shall be a decree in favour of the plaintiff and against the defendant in the sum of Rs.34,340/- with interest @9% per annum from the date of suit till the payment or realisation with costs quantified in accordance with Rules.

8. Decree be drawn up accordingly. Certified copy expedited.

(S.C.Dharmadhikari, J.)